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IN THE SUPREME COURT OF THE STATE OF IDAHO

KENT E. HALL,)	
)	NOS. 40471 & 40472
Petitioner-Appellant,)	
)	BANNOCK COUNTY NOS. CV 2012-
v.)	3577 & CV 2012-3578
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK

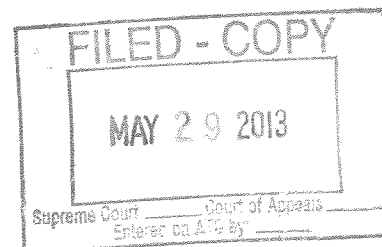
HONORABLE STEPHEN DUNN
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

SPENCER J. HAHN
Deputy State Appellate Public Defender
I.S.B. #8576
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEYS FOR
PETITIONER-APPELLANT

ATTORNEY FOR
RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Kent E. Hall appeals from the district court's order denying his request for appointment of counsel and summarily dismissing his petitions for post-conviction relief. He asserts that the district court erred when, in denying his request for appointment of counsel, it concluded that none of his claims suggested even the possibility of a valid claim. He further asserts that the district court abused its discretion when it denied his motion for a continuance in order to give him time to provide additional information in support of his claims.

Statement of the Facts and Course of Proceedings

In the criminal cases underlying his post-conviction petitions, Mr. Hall pled guilty to possession of a controlled substance (methamphetamine) with intent to deliver and delivery of a controlled substance (methamphetamine). (R., pp.12, 18.) He received concurrent, unified sentences of twelve years, with five years fixed, for those convictions. The district court did not retain jurisdiction or suspend the sentence in either case. (R., pp.13-15, 19-21.)

Mr. Hall filed verified petitions for post-conviction relief in two cases.¹ He supported his petitions with an affidavit and several attachments, including several memoranda from the Idaho State Police describing misconduct and deception, including the unauthorized possession of controlled substances, by forensic scientists employed

¹ The two petitions are identical in all respects, and each contains both criminal case numbers. As such, citation will be made to only one of the petitions contained in the consolidated record.

at the Pocatello laboratory. (R., pp.1-23, 79-101.) Mr. Hall's claims were that he received ineffective assistance of counsel, that his "plea was not knowingly or voluntarily entered because it was induced by unkept [sic] promises" made by defense counsel, and "[t]he conviction and sentence is in violation of the U.S. and Idaho State Constitution[s]." (R., p.2.) Mr. Hall sought the appointment of counsel to assist him in pursuing his claims. (R., p.24.)

In an affidavit in support of his petitions, Mr. Hall supported the coerced plea allegation with a statement that "[t]o induce me to enter a guilty plea in my cases, I was PROMISED I would receive DRUG COURT and subsequent probation, NO PRISON TERM." (R., p.6 (capitalization in original).) With respect to the claim that his conviction and sentence were obtained in violation of the state and federal constitutions, Mr. Hall explained, "ISP Forensic labs corrupted the alleged drug samples submitted in my case (see attached letters from ISP Major Kendrick Wills, Forensic services commander) and thus violated my rights to due process." (R., p.6.) With respect to his allegation that he received ineffective assistance of counsel, Mr. Hall explained, *inter alia*, that his attorney was ineffective for refusing to file motions to withdraw his guilty pleas upon learning of the misconduct at the State crime laboratory. (R., p.6.)

The district court filed a Notice of Intent to Deny Counsel and Dismiss Petition for Post-Conviction Relief (*hereinafter*, Notice). (R., p.43.) As an initial matter, the district court concluded that none of Mr. Hall's claims raised even the possibility of a valid claim necessitating the appointment of counsel because,

[His] allegation that his guilty plea was not voluntary due to false promises . . . is directly contradicted by the record. Furthermore, the Petition and Affidavit do not provide facts or argument relative to how the "potential Brady/Giglio material" actually affected these cases. Finally, Hall's

ineffective assistance arguments are directly dependent on the previously mentioned allegations.

(R., pp.47-48.)

In the portion of its Notice addressing the basis for summarily dismissing his Petition, the district court provided greater detail as to its conclusions that Mr. Hall failed to suggest even the possibility of a valid claim. In addressing Mr. Hall's claim that his guilty plea was not knowing and voluntary "because he was induced by a false promise that he would be diverted into drug court, without a prison sentence," the district court explained that it "finds that there is no merit to Hall's allegation" because "[p]rior to pleading guilty, Hall completed a guilty plea questionnaire in each of his cases" in which he "affirmed in the questionnaire the terms of his plea agreement" and "responded in each questionnaire that no person had promised a special sentence, reward, favorable treatment or leniency with regard to his plea." The district court went on to note, "Finally, Hall responded in the questionnaire[s] that he understood that no one, including his attorney could force him to plead guilty in his case, and that his guilty plea was being entered freely and voluntarily."² (R., p.48.)

With respect to the claim that Mr. Hall's constitutional rights were violated by the State's failure to disclose information concerning misconduct at the State crime laboratory, the district court explained,

When a defendant knowingly and voluntarily pleads guilty all challenges to non-jurisdictional defects are simultaneously waived. As discussed above, the Court finds that Hall's guilty plea was not induced by a false promise and that the plea was therefore knowingly and voluntarily made. Because his plea was knowing and voluntary Hall waived his ability to claim that improprieties at the state lab led to his conviction.

² A file-stamped copy of the guilty plea questionnaire used for both cases is attached to a Motion to Augment filed on May 16, 2013.

(R., pp.49-50 (footnote citing *Stone v. State*, 108 Idaho 822, 826 (Ct. App. 1985) omitted).)

As to his claim that his attorney coerced him to plead guilty by making false promises concerning the plea agreement, the district court reasoned, “Hall’s unsupported allegations of attorney coercion do not create a valid ineffective assistance of counsel claim.” (R., p.51.) With respect to his claim that his attorney was ineffective for failing to file a motion to withdraw his guilty pleas, the district court explained that Mr. Hall had “failed to show” that his attorney’s failure to file such a motion “was unreasonable or violated professional norms.” The district court continued,

Hall has merely set forth conclusory allegations regarding his counsel’s strategic decisions. As stated above, the Court cannot see any relevance between the incidents at the ISP forensics lab and the testing of the drugs in Hall’s case. Furthermore, as discussed above, a voluntary guilty plea is a waiver of non-jurisdictional defects because, in effect, the defendant is admitting that he knowingly committed the acts that make up the elements of a crime; therefore, forensic testing becomes moot³

. . . .

Additionally, Hall has failed to show that his counsel’s decisions not to file frivolous motions have prejudiced him. Because Hall has failed to prove either part of the *Strickland* test his claim of ineffective assistance of counsel fails.

(R., pp.51-53.)

In response to the district court’s Notice, Mr. Hall filed a Motion for Continuance, in which he sought a thirty day continuance because:

³ Omitted language concerns a document cited to by the district court concerning statements purportedly made by Mr. Hall to police officers and the results of a “presumptive field test” purportedly conducted on evidence in one of the criminal cases. A file-stamped copy of this document is attached to a Motion to Augment filed on May 16, 2013.

[H]e is in the process of preparing and serving SUBPOENAS DUCES TECUM upon the Idaho State Police Forensic laboratory to obtain the investigative report that will support his contentions of boched [sic] testing of the alleged narcotics in the above entitled cases, and such will show that plaintiff is entitled to the relief he seeks in his PCR petitions.

(R, pp.133-34 (capitalization in original).)

In denying Mr. Hall's Motion for Continuance, the district court explained that "any allegations that he may have that the narcotics testing done in connection with his case was defective is irrelevant" because "when a defendant knowingly and voluntarily pleads guilty to the underlying charges all challenges to non-jurisdictional defects are simultaneously waived." The district court then ordered his petitions to be dismissed. (R., p.137 (footnote citing *Stone* omitted).) A judgment was later entered dismissing both petitions. (R., p.157.)

Mr. Hall filed a premature Notice of Appeal following the dismissal of his petitions.⁴ (R., p.139.)

⁴ Recognizing the fact that the district court had failed to enter judgments dismissing the petitions, the Idaho Supreme Court suspended the appeals and temporarily remanded the case for entry of judgments of dismissal. (R., p.159.) In response, the district court entered a judgment of dismissal as to both cases. (R., p.157.)

ISSUES

1. Did the district court err when it denied Mr. Hall's request for appointment of post-conviction counsel because his petition suggested, at a minimum, the possibility of a valid claim?
2. Did the district court abuse its discretion when it denied Mr. Hall's motion for a continuance because its reasoning in doing so was legally incorrect?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Hall's Request For Appointment Of Post-Conviction Counsel Because His Petition Suggested, At A Minimum, The Possibility Of A Valid Claim

A. Introduction

Mr. Hall asserts that the district court's refusal to appoint counsel to assist him in the prosecution of his Petition was in error. For the reasons set forth below, he satisfied the standard for appointment of counsel under Idaho Code § 19-4904 because his Petition suggested, at a minimum, the possibility of a valid claim.

B. Applicable Legal Standards

1. Appointment Of Counsel

"A request for appointment of counsel in a post conviction proceeding is governed by Idaho Code § 19-4904, which provides that in proceedings under the UPCPA [Uniform Post-Conviction Procedures Act], a court-appointed attorney 'may be made available' to an applicant who is unable to pay the costs of representation. The decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court." *Charboneau v. State*, 140 Idaho 789, 792 (2004).

In *Charboneau*, the Supreme Court held that a post-conviction petitioner is entitled to the appointment of counsel "unless the trial court determines that the post-conviction proceeding is frivolous." *Charboneau*, 140 Idaho at 792 (quoting *Brown v. State*, 135 Idaho 676, 679 (2001)). It further held that the proceeding is not frivolous

and, thus, counsel must be appointed, if the petitioner “alleges facts to raise the possibility of a valid claim” *Id.* at 793 (emphasis added).

More recently, in *Swader v. State*, 143 Idaho 651 (2007), the Supreme Court had occasion to revisit the standard for appointment of counsel in post-conviction cases. In that case, the Court reaffirmed the *Charboneau* standard:

In deciding whether the *pro se* petition raises the possibility of a valid claim, the trial court should consider whether the facts alleged are such that a reasonable person with adequate means would be willing to retain counsel to conduct a further investigation into the claims. Although “the petitioner is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims,” *Brown v. State*, 135 Idaho 676, 679, 23 P.3d 138, 141 (2001), the court should appoint counsel if the facts alleged raise the possibility of a valid claim.

Swader, 143 Idaho at 654. The *Swader* Court also made it clear that this standard is much lower than the standard for deciding petitions for post-conviction relief on their merits because, as had also been recognized in *Charboneau*, *pro se* petitioners generally cannot investigate or properly present their claims (regardless of whether those claims will ultimately be successful) without the assistance of counsel. *Id.* at 654-55.

2. Standard Of Review

As noted above, in *Charboneau*, the Idaho Supreme Court held that “[t]he decision to grant or deny a request for court-appointed counsel lies within the discretion of the district court.” *Charboneau*, 140 Idaho at 792. Indeed, since *Charboneau* was decided in 2004, the Idaho Supreme Court has continued to describe the standard for appointment of counsel in discretionary terms. See *Eby v. State*, 148 Idaho 731, 738 (2010); *Workman v. State*, 144 Idaho 518, 529 (2007). From this language one would think that a district court’s denial of a motion for appointment of post-conviction counsel

would be reviewed for an abuse of discretion on appeal. However, Mr. Hall contends that, the language of *Charboneau*, *Workman*, and *Eby* notwithstanding, the Idaho Supreme Court no longer treats the evaluation of a motion for appointment of post-conviction counsel as a discretionary decision and, therefore, the abuse of discretion standard cannot apply on appeal.

The “possibility of a valid claim” standard that was coined in *Charboneau*, and reiterated in *Swader*, is a strictly legal standard that leaves no room for the district court to exercise any discretion. Under that standard, if there is the possibility of a valid claim (which is a purely legal question) the petitioner is entitled to the appointment of counsel, while if there is no possibility of a valid claim (which is, again, a purely legal question) the petitioner is not entitled to the appointment of counsel. This was made clear in *Swader and Melton v. State*, 148 Idaho 339 (2009).

Swader was the first Idaho Supreme Court case to interpret and apply *Charboneau*’s “possibility of a valid claim” standard. In *Swader*, the district court had applied the wrong legal standard in denying the petitioner’s motion for appointment of counsel but, instead of remanding the case for the district court to exercise its discretion in light of the correct standard, the Supreme Court applied the correct standard itself, determined that the petitioner-appellant had raised the possibility of a valid claim, reversed the district court’s order denying counsel, and then remanded the case to the district court. *Swader*, 143 Idaho at 653-55.

In *Melton*, although the result was different, the analysis was the same. In that case, although the Supreme Court held that the district court had erred in failing to consider the petitioner’s motion for appointment of post-conviction counsel prior to

summarily dismissing his successive petition for post-conviction relief, it declined the petitioner's request to remand the case to the district court for an exercise of the district judge's discretion and, instead, held that the error in failing to rule on the motion was essentially harmless because the petitioner's "successive petition for post-conviction relief did not raise the possibility of a valid claim." *Melton*, 148 Idaho at 342.

In light of *Swader* and *Melton*, Mr. Hall contends that the decision to appoint counsel in a post-conviction case is discretionary in name only,⁵ and is really a strict question of law. As such, he contends that any decision by a district court to deny a post-conviction petitioner counsel must be reviewed *de novo* on appeal. See *Castorena v. General Elec.*, 149 Idaho 609, 713 (2010) ("This Court exercises free review over questions of law.").

⁵ In at least one other context the Idaho Supreme Court has recognized that its "abuse of discretion" standard of review was somewhat of a misnomer:

When there is a motion for mistrial based upon prosecutorial error supported by a contemporaneous objection to the underlying procedural or evidentiary error we review the denial of a motion for mistrial for reversible error.

[T]he question on appeal is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the "abuse of discretion" standard is a misnomer. The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

When there has been a contemporaneous objection we determine factually if there was prosecutorial misconduct, then we determine whether the error was harmless.

C. The District Court Erred When It Denied Mr. Hall's Request For Appointment Of Post-Conviction Counsel Because His Petition Suggested, At A Minimum, The Possibility Of A Valid Claim

Mr. Hall maintains that his Petition raised, at a minimum, the possibility of at least three valid claims, namely (1) that his guilty pleas were not knowingly, intelligently, and voluntarily made because his attorney falsely promised him that he would receive probation and drug court, (2) that he was denied due process when the State failed to disclose exculpatory evidence regarding misconduct at the crime laboratory prior to his guilty pleas, and (3) that his attorney was ineffective for failing to file a motion to withdraw his guilty pleas when Mr. Hall informed him about the *Brady* material.

1. Invalid Guilty Pleas Claim

One of Mr. Hall's claims was that his guilty pleas were involuntary because his attorney promised him that, if he pled guilty, he would receive probation and drug court and not serve time in prison. (R., p.6.) In rejecting this claim, the district court explained that it found "no merit to Hall's allegation" because "[p]rior to pleading guilty, Hall completed a guilty plea questionnaire in each of his cases" in which he "affirmed in the questionnaire the terms of his plea agreement" and "responded in each^[6] questionnaire that no person had promised a special sentence, reward, favorable treatment or leniency with regard to his plea." (R., p.48.)

While the record of guilty plea proceedings is relevant to a subsequent claim that the plea was not entered knowingly, intelligently, or voluntarily, "the barrier of the plea or sentencing proceeding record, although imposing, is not invariably insurmountable."

State v. Field, 144 Idaho 559, 571 (2007) (citations omitted).

Blackledge v. Allison, 431 U.S. 63, 74 (1977). In administering the writ of habeas corpus,

federal courts cannot fairly adopt a *per se* rule excluding all possibility that a defendant's representations at the time his guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation by others as to make the guilty plea a constitutionally inadequate basis for imprisonment

Id. at 75. This Court sees the "Uniform Post Conviction Procedure Act as an expansion of the Writ of Habeas Corpus and not as a denial of the same." See *Dionne v. State*, 93 Idaho 235, 237 (1969). In addressing post conviction claims regarding the nature of a plea, this Court has not adopted a *per se* rule limiting review to the record of the proceedings at which the plea was taken, to the exclusion of additional evidence of what led to the entry of the plea. See *McKeeth v. State*, 140 Idaho 847 (2004) (considering evidence outside of the written plea agreement to determine whether plea was the result of ineffective assistance of counsel).

In light of the law on this matter, the district court erred when it concluded, based solely on its review of the guilty plea questionnaire, that Mr. Hall had failed to raise even the possibility of a valid claim.

2. Brady Violation Claim

The second of Mr. Hall's claims was that his conviction was obtained in violation of his right to due process under the United States and Idaho Constitutions because the State failed to disclose exculpatory evidence concerning misconduct at the crime

⁶ It appears that one questionnaire, containing both case numbers, was completed. (Guilty Plea Questionnaire (augmentation).)

laboratory. (R., pp.2, 6, 8-10.) In concluding that this claim did not merit the appointment of counsel and should be summarily dismissed, the district court explained,

When a defendant knowingly and voluntarily pleads guilty all challenges to non-jurisdictional defects are simultaneously waived. As discussed above, the Court finds that Hall's guilty plea was not induced by a false promise and that the plea was therefore knowingly and voluntarily made. Because his plea was knowing and voluntary Hall waived his ability to claim that improprieties at the state lab led to his conviction.

(R., pp.49-50 (footnote citing *Stone v. State*, 108 Idaho 822, 826 (Ct. App. 1985) omitted).)

The district court's conclusion that Mr. Hall's allegations did not give rise to the possibility of valid claim because he waived any such claim when he pled guilty is incorrect. See *State v. Gardner*, 126 Idaho 428, 432-37 (Ct. App. 1994) (recognizing that a *Brady* violation may render a guilty plea unknowing, unintelligent, or involuntary and, therefore, may be a proper basis to withdraw a guilty plea under I.C.R. 33(c)); *State v. Simons*, 112 Idaho 254, 259 (Ct. App. 1987) (holding that "if exculpatory evidence is withheld *and material*," then a defendant who has pled guilty "was denied constitutionally effective assistance of counsel and will not be bound by her plea") (citation omitted) (emphasis in original).

3. Motion To Withdraw Guilty Plea Claim

The third claim raised by Mr. Hall was that he received ineffective assistance of counsel when his attorney refused to file a motion to withdraw his guilty plea upon being apprised of the *Brady* material by Mr. Hall. (R., pp.3, 6, 8-10.) In rejecting this claim, the district court concluded that any such motion would have been "frivolous" and again asserted that Mr. Hall could not have moved to withdraw his guilty pleas based on his

discovery of improperly-withheld *Brady* material because his guilty pleas waived any such claim. (R., pp.51-53.)

The district court's conclusions are contradicted by the case law cited in the argument on the previous claim. See *Simons*, 112 Idaho at 259.

II.

The District Court Abused Its Discretion When It Denied Mr. Hall's Motion For A Continuance Because Its Reasoning Was Legally Incorrect

A. Introduction

Mr. Hall asserts that the district court abused its discretion when it denied his Motion for Continuance because the basis for its decision was legally incorrect. As such, Mr. Hall is entitled to have the judgments of dismissal vacated, with this matter remanded to provide him with an opportunity to present evidence that supports his claims related to misconduct at the crime laboratory.⁷

B. Standard Of Review

A district court's decision to deny a motion for a continuance is reviewed for an abuse of discretion. "[T]he denial of a motion for continuance will not be an abuse of discretion unless it can be shown that the substantial rights of the defendant have been prejudiced." *State v. Wood*, 132 Idaho 88, 106 (1998) (citations omitted). When an exercise of discretion is reviewed on appeal, the appellate court conducts a three part inquiry. First, the district court must rightly perceive the issue as one of discretion.

⁷ If this Court finds in Mr. Hall's favor as to his first argument, then this argument will be moot.

Second, the district court must act within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices. Finally, the district court must reach its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

C. The District Court Abused Its Discretion When It Denied Mr. Hall's Motion For A Continuance Because Its Reasoning Was Legally Incorrect

Mr. Hall responded to the district court's Notice by requesting a continuance in order to obtain information and documents that would support his claim that misconduct at the State crime laboratory affected the test results in his cases. (R., pp.133-34.) In denying this Motion and summarily dismissing his petitions, the district court explained that any misconduct involving the purported drugs in his criminal cases was "irrelevant" because, by pleading guilty, he "waived" any and all claims concerning failure to disclose *Brady* material. (R., p.137.) Depriving Mr. Hall of a meaningful opportunity to respond to the district court's intent to dismiss his claims prejudiced his substantial rights. See *Banks v. State*, 123 Idaho 953, 954 (1993) (the reason that a district court's notice is required to be specific is to provide a petitioner with a meaningful opportunity to respond).

It is unclear how the district court came to the conclusion that a prosecutor's failure to disclose *Brady* material, which comes to light only after a guilty plea has been entered, is "waived" by a defendant's guilty plea. While the district court cited to *Stone*, that case does not have a holding as broad as the district court's reading of it indicates. In *Stone*, the petitioner, who pled guilty, challenged his conviction in post-conviction based on "the allegedly illegal search and seizure of [his] car." In rejecting this claim as

a basis for post-conviction relief, the Idaho Court of Appeals explained, “A valid guilty plea waives all non-jurisdictional defects and defenses. An alleged illegal search and seizure does not affect the validity of a conviction based upon a knowing and voluntary guilty plea.” *Stone*, 108 Idaho at 863-64 (citations omitted).)

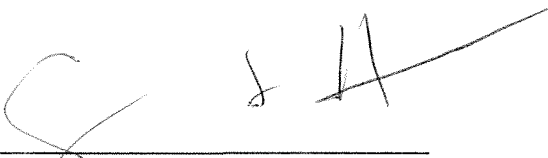
It does not appear that Stone alleged either that the State withheld exculpatory evidence or that his attorney was ineffective for failing to pursue a motion to suppress. As such, the holding in *Stone* has no bearing on Mr. Hall’s claim concerning the State’s *Brady* violation. It also does not appear to apply to Mr. Hall’s related claim that his attorney was ineffective for failing to file motions to withdraw his guilty pleas upon learning of the *Brady* material and upon Mr. Hall’s request. See *Gardner*, 126 Idaho at 432-37 (recognizing that a *Brady* violation may render a guilty plea unknowing, unintelligent, or involuntary and, therefore, may be a proper basis to withdraw a guilty plea under I.C.R. 33(c)); *Simons*, 112 Idaho at 259 (holding that “if exculpatory evidence is withheld *and material*,” then a defendant who has pled guilty “was denied constitutionally effective assistance of counsel and will not be bound by her plea”) (citation omitted) (emphasis in original).

Because the district court’s reasoning in denying Mr. Hall’s motion for a continuance was legally incorrect, and the denial of his motion prejudiced his substantial rights, it abused its discretion when it denied his motion. As such, Mr. Hall respectfully requests that the judgments of dismissal be vacated, and that this matter be remanded to provide Mr. Hall with an opportunity to present evidence that supports his claims concerning misconduct at the State crime laboratory.

CONCLUSION

For the reasons set forth herein, Mr. Hall respectfully requests that this Court vacate the judgments of dismissal, and remand this matter for the appointment of post-conviction counsel. In the alternative, Mr. Hall requests that this Court vacate the judgments of dismissal, and remand this matter to provide him with an opportunity to present evidence that supports his claims concerning misconduct at the State crime laboratory.

DATED this 29th day of May, 2013.



SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on this 29th day of May, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

KENT EMMITT HALL
INMATE #30134
SICI
PO BOX 8509
BOISE ID 83707

STEPHEN DUNN
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

SJH/eas